

In the  
Supreme Court of the United States

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No. 996.

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ALASKA SALMON COMPANY  
A Corporation,  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

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*MOTION TO DISMISS WRIT OF ERROR.*

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In Error to the United States Circuit Court of  
Appeals for the Ninth Circuit.

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GEORGE B. GRIGSBY,  
Attorney General for the  
Territory of Alaska.

In the  
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Now comes the Defendant in Error, the Territory of Alaska, by George B. Grigsby, Attorney General, and moves this court to dismiss the writ of error herein for want of jurisdiction.

This motion is based upon all the records and files herein, and upon the grounds stated in the annexed brief and argument.

GEORGE B. GRIGSBY,  
Attorney General for the  
Territory of Alaska.

IN THE SUPREME COURT OF THE  
UNITED STATES.

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*STATEMENT OF THE CASE.*

This is an action originally brought by the Territory of Alaska to recover taxes claimed to be due from the plaintiff in error under an act of the Territorial Legislature of the Territory of Alaska. The case was brought originally in the United States District Court for the District of Alaska, First Division. Judgment was rendered in said court in favor of the Territory, and thereupon a writ of error was sued out to the Circuit Court of Appeals for the Ninth Circuit. The judgment

of the lower court was affirmed by the Circuit Court of Appeals. Thereafter a petition for a writ of certiorari was filed in the Supreme Court by the plaintiff in error, which has been denied. Subsequently and within the time allowed by law a writ of error was sued out to this court.

The defendant in error contends that the judgment of the Circuit Court of Appeals is final herein and that this court is therefore without jurisdiction.

### *BRIEF AND ARGUMENT.*

The law defining the appellate jurisdiction of the Circuit Court of Appeals over cases arising in Alaska is set forth in section 134 of the Judicial Code of the United States (36 Stat. L. 1134) as follows:

"Sec. 134. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section two hundred and forty-seven, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the ninth circuit, and the judgments, orders, and decrees of said court shall be final in all such cases. But whenever such circuit court of appeals

may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals."

Section 247 of the Judicial Code (36 Stat. 1, 1158) provides for the taking of appeals and writs of error from the District Courts of Alaska direct to the Supreme Court, as follows:

"Sec. 247. Appeals and writs of error may be taken and prosecuted from the final judgments and decrees of the district court for the district of Alaska or for any division thereof, direct to the Supreme Court of the United States, in the following cases: In prize cases; and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. Such writs, of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the District Courts to the Supreme Court."

If this court has jurisdiction at all in the premises it is under section 241 of the Judicial Code of the United States (36 Stat. L. 1157) which is as follows:

"Sec. 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs."

Since the judgment of the Circuit Court of Appeals in this case is made final by the express terms of section 134 above quoted, it follows that this court is without jurisdiction. No constitutional questions were raised either by the pleadings or in the subsequent proceedings of the case in the trial court (see Assignment of Errors, Transcript of Record, page 100). Even had such constitutional questions been raised, we believe the finality of the judgment of the Circuit Court of Appeals would not have been affected. No such questions having been raised, however, no argument is necessary to sustain the proposition that this court is without jurisdiction.

GEORGE B. GRIGSBY,

Attorney General for the  
Territory of Alaska.

IN THE SUPREME COURT OF THE  
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} *NOTICE*

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To the Alaska Salmon Company, a corporation,  
plaintiff in error, and to Warren Gregory,  
George N. Whipple and E. S. McCord, its  
counsel:

You are hereby notified that the Territory of  
Alaska, the defendant in error herein, will submit  
to the Supreme Court of the United States, on Mon-  
day, the.....day of February,  
1918, at the opening of the court on that day, or  
as soon thereafter as counsel can be heard, the mo-  
tion of which the foregoing is a copy, and that said

motion will be submitted upon all the records and files herein, and upon the foregoing statement of facts and brief and argument.

GEORGE B. GRIGSBY,  
Attorney General for the  
Territory of Alaska.

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Service of the foregoing notice, motion, brief and argument is hereby accepted and acknowledged this ..... day of January, 1918.

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Counsel for plaintiff in error.

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